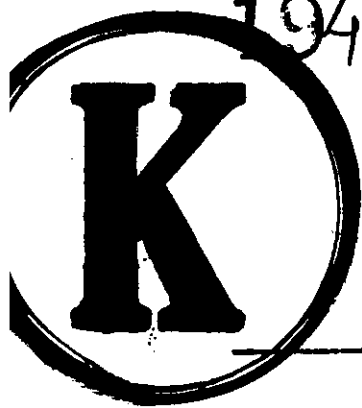




1949.

File No. Rents II

Legal DEPARTMENT 49(N)
B BRANCH

Subject:— Notifications under the
Bombay Rents, Hotel Rates,
and Lodging House Rates
(Control) Act, 1944

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P-16
1949

File No.

Std. Sectt. Slip 24 B c.

Rents II/49(N)

127-B

Legal Department.

As the suit has already been instituted, the cancellation of the exemption Order would not as already pointed out help the party in any way. If the suit is decided before the Ordinance is promulgated^{lgated} it will be decided in view of the Full Bench decision in accordance with the provisions of the Act of 1939. The Act of 1947 is more favourable to the tenants and to get its benefit it is in the interest of the party to get adjournment till the Ordinance is promulgated. As suggested by Secretary, Health and Local Government Department at this stage the party may simply be advised to get an adjournment till the end of February 1949.

S. D.

Id/-

Additional Secretary to Government.

U.R. to H. & L.G.D. No. 885, dated the 25th Jan. 1949.

VGP.

2- 6-56.

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Office of the H.L.A.

A draft notification is appended.

2. It ^{has} ~~has~~ been represented that it is possible to get round the present notification by converting a gift into a sale on showing nominal consideration which moreover results in the loss of stamp revenue. Furthermore no donee, be ^{as} ~~he~~ relation or a third party will be able to recover possession on evicting a tenant. In these circumstances it is perhaps desirable to expand the notification by including therein the case of a gift without any qualification as to the donee being a relation or otherwise.

3. It has further been suggested by the Chairman of the Incorporated Law Society that this opportunity may be taken to consider the question of exempting re-conveyances, deeds of appointment and transfers from trustees to beneficiaries as the Attorney's profession is experiencing great difficulty in relation to such transactions. Additional entries Nos. 3 and 4 have therefore, been inserted in the draft.

~~S. D.~~

^{sdl -}
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No. 1341. dated the ^{16th} February 1949.

VGP.

2- 6-56.

Health and Local Government Department,
Bombay Castle, 1949.

Bombay Rents, Hotel
and Lodging House
Rates Control Act,
1947.

No. - In exercise of the powers conferred
by ~~section~~ section 15 of the Bombay Rents Control Act, 1947 (Bom. LVII of 1947), the Government of Bombay is pleased to amend the Government Notification in the Health and Local Government Department, No. 5975/33, dated the 12th May 1948, as follows, namely :-

In the Schedule to the said notification---

- (1) in entry (1), for the words "on sale or", the words and brackets "on (i) gift, (ii) sale or (iii)" shall be substituted.
- (ii) After entry (2) the following new entries shall be added :-

"(3) Reconveyance of mortgaged property where such property comprises of a building site held under a lease together with the whole building standing thereon.

(4) Transfer or assignment of trust-property without consideration from ^{one} ~~any~~ trustee to another trustee or from a trustee to a beneficiary where such property comprises of a building site held under a lease together with the whole building standing thereon."

By order of the Governor of Bombay.

Secretary to Government.

VGP.

2-6-58.

Section 24(4) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, makes it an offence for a landlord if he does any act by which the essential supply or service is cut off. If he attempts to cut off such supply such attempt will also be punishable. This provision affords a tenant sufficient protection against a landlord. The recourse to a criminal court will afford the tenant a speedier remedy. There is no necessity to make provision for the grant of a temporary injunction. The Chief Judge, Presidency Small Cause Court, who was consulted, states that no difficulty has so far been felt in places where the Presidency Small Cause Courts Act applies by reason of the fact that the said Act does not contain provisions for the grant of a temporary injunction. No case is made out for an amendment of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

S. D.

del —

Additional Secretary to Government.

U.R. to H. & L.G.D.No. 2955, dated the 16th March 1949.

VGP.

2-6-56.

NOTIFICATION.

Health and Local Government Department.

Bombay Castle,

1949.

Bombay Rents,
Hotel and
Lodging House
Rates Control
Act, 1947.

No. 5975/53-II.- In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.LVII of 1947) as applied by the Indian States (Application of Laws) Order, 1948, and the Kolhapur State (Application of Laws) Order, 1949 the Government of Bombay is pleased to extend all of the provisions of Part III of the said Act, to the areas specified in column 2 of the Schedule appended hereto, with effect on and from the date of this notification.

Schedule.

1.

2.

1. Kolhapur District

Kolhapur Municipal District

2. Satara South District.

(a) Sangli Municipal District

(b) Miraj Municipal District

By order of the Governor of Bombay.

Under Secretary to Government.

VGP.

2-6-53.

NOTIFICATION.

Health and Local Government Department.

Bombay Castle, September 1949.

Bombay Rents,
Hotel and
Lodging House
Rates Control Act,
1947.

No. . In exercise of the powers conferred by section 32 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.LVII of 1947) as applied by the Indian States (Application of Laws) Order, 1948 and the Kolhapur State (Application of Laws) Order, 1949, the Government of Bombay is pleased to appoint the Officers mentioned in column 1 of the Schedule appended hereto to be the Controllers for the purposes of Part III of the said Act for the areas Schedule.

SCHEDULE.

OFFICER.

AREA.

1.

2.

Here specify
the designation
of the officer.

Kolhapur Municipal
District.

Sangli Municipal
District.

Miraj Municipal
District.

By order of the Governor of Bombay.

Under Secretary to Government.

- 13 -

Legal Department.

The revised draft notifications are
sent herewith.

~~S.D.~~

2d/-

Additional Secretary to Government.

U.R. to H.& L.G.D. No. 10299, dated the 12th Sept. 1949.

VGP.

2-8-53.

NOTIFICATION.

Health & Local Government Department,
Bombay Castle, Sept. 1949.

No. . In exercise of the powers conferred by sub-section (3) of section 2 and sub-section (2) of section 8 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. of LVII of 1947), as applied by the Indian States (Application of Laws) Order, 1948, and the Kolhapur State (Application of Laws) Order, 1949, the Government of Bombay is pleased-

(i) to direct that all of the provisions of Part II of the said Act shall extend with effect on and from the date of this notification to the areas specified in the Schedule appended hereto (hereinafter called the "said areas"); and

(ii) to specify that in the said areas, Part II of the said Act shall apply to all premises let for residence, education, business or storage or let to Government or a local authority for the purpose of setting up an office or a public hospital or dispensary

SCHEDULE.

(a) Satara South District.

- (1) ^aShahpur Municipal District.
- (2) Sangli Municipal District.
- (3) Miraj Municipal District.
- (4) Madhavnagar Municipal District.

(b) Satara North District.

- (1) Ogalewadi Village.
- (2) Sadashivgad Village.
- (3) Phaltan Municipal District.

(c) Sholapur District.

Akalkot Municipal District.

(d) Kolhapur District.

- (1) Kolhapur Municipal District.
- (2) Ichalkaranji Municipal District.
- (3) Jaysingpur Municipal District.
- (4) Gadhinglaj Municipal District.
- (5) Kagal Municipal District.

(e) Bijapur District.

- (1) Jamkhandi Municipal District.
- (2) Banhatti Municipal District.
- (3) Rabkavi Municipal District.

(f) Broach District.

Rajpipla Municipal District.

(g) Panch Mahals District.

- (1) Lunawada Municipal District.
- (2) Baria Municipal District.
- (3) Chhota Udepur Municipal District.

(h) Banas Kantha District.

Palanpur Municipal District.

(i) Kaira District.

Cambay Municipal District.

By order of the Governor of Bombay.

Under Secretary to Government.

VGP.

4-6-56.

Legal Department.

The revised draft notification are sent herewith.

2. After 1st August 1949, the Navsari District of the Baroda State has been converted into a taluka called the Navsari Taluka of the Surat District. Similarly the N. Okhamandal District of the former Baroda State no longer exists as an independent district but has been amalgamated with the Amreli District. The relevant areas have, therefore, been shown under the taluka and district in which they are included at present. H. & L.G.D. should verify the Schedule before issue of the notification.

~~S. D.~~

sd/-

Additional Secretary to Government.

U.R. to H. & L.G.D. No. 10434 dated the 15th September 1949.

VGP.

4-6-58

Legal Department.

As regards point No. 1, it is not necessary to define the word "sub-tenant". The definition of the word "tenant" in section 5(11) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, includes an assignee of a tenant before the Act came into force. After the Act came into force, an assignment of tenancy is prohibited. Wherever a specific reference to the assignment of tenancy is necessary, it occurs in such section as section 22(1). No amendment ^{will} of the Act as suggested by Mr. Potdar is necessary.

As regards point No. 2, it is not necessary to define the word "lawfully". The English cases referred to by Mr. Potdar do not show any conflict regarding the interpretation of the word.

So also there is no necessity to add an explanation to explain the word "derive". The word has a definite legal connotation. According to the modern ^{legislative} practice illustrations are avoided as they ^{serve} ~~serve~~ no useful purpose. Points No. 3 and 4 do not survive.

As regards point No. 5, the High Court has not decided that a statutory tenancy can be determined only by an order of ejectment passed by the Court. It can be determined by other lawful means.

On the whole none of the points raised by Mr. Potdar are of any substance and no amendment of the Act is necessary for the purpose.

S.d.

Additional Secretary to Government.

U.R. to H. & L. S.D. No. 10515, dated the 16th September 1949.

NOTIFICATION.

Department.

Bombay Castle,

Oct bar 1949.

No. .- Whereas difficulties have arisen in the application, operation and enforcement of certain provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter called the said Act), in ^{its} application to the territories of the merged State of Baroda.

And whereas it is necessary and expedient to remove those difficulties;

Now in exercise of the powers conferred by paragraph 15 ^d ~~of~~ ^{the} Baroda State (Application of Laws) Order, 1949, as continued in force by the States Merger (Governor's Province) Order, 1949, the Government of Bombay is pleased to direct that in its application to the territories of the said State the following amendments shall be made and shall be deemed to have been made in the provisions of the said Act with effect from the 30th day of July 1949.

1. Amendment of section 5.- For clause (10) of section 5, the following shall be substituted:-

"(10) 'specified date' means ---

(a) in the case of any premises let for the purpose of residence, the first day of January 1943, and

(b) in the case of any premises let for non-residential purpose the first day of January 1944;

(10A) 'standard rent' in relation to any premises let for the purpose of residence or for non-residential purpose means ---

(a) where the standard rent is fixed by the Controller under the House Rent Control Order, 1947, made by the Baroda Government, such standard rent, or

(b) where the standard rent is not so fixed, subject to the provisions of section 11,---

(i) the rent at which the premises were let on the specified date, or

(ii) where they were not let on the specified date, the rent at which they were last let before that date, or

(iii) where they were first let after the specified date, the rent at which they were first let, or

(iv) in any of the cases specified in section 11, the rent fixed by the Court;

Provided that an increase in rent made and in operation immediately before the 30th day of July 1949 in accordance with the provisions of the said House Rent Control Order, 1947, shall be deemed to be included in the standard rent;"

2. Amendment of sections 7, 11 and 18.-

In sections 7, 11 and 18 of the said Act, for the words and figures "the first day of September 1940" wherever they occur the words "the specified date" shall be substituted.

Legal Department.

The intentions of Government have been carried out in the revised draft sent herewith.

S. D.

2d/-

Additional Secretary to Government.

U.R. to Labour Deptt., No., 10878, dated the 28th Sept. 1949.

VGP.

4-6-50

Office of the R.L.A.

Tendolkar J. has eventually reached the right conclusion that the expression "with effect from" used in the notification has the same meaning as the word "on". During the course of the reasoning His Lordship, however, observed that it was ^{rather} further unfortunate that the draftsman of the notification should have departed from the language of section 3(1) and not used the word "on" and used instead the words "with effect from" because if the word "on" had been used it could have been inarguable that the Act did not come into operation on the date of the notification. Relying on the authority of paragraph 200 of Halsbury's Laws of England, Vol 32, page 138, His Lordship observes that the word "from" is sometimes interpreted as "on and after" and at other times as "after" only.

2. The notification in question was not scrutinised by Legal Department. It is, however, fair to add that Legal Department has generally used the expression "with effect from" in such notifications. With the greatest respect to the learned Judge it must be said that there is a very little scope - as he himself has even in the next expression "with effect from". That expression ^{is} actually realised - for ambiguity must be distinguished from the mere word "from" as he himself was ultimately obliged to do. Not only that, but the authority which he has quoted and the provisions of sub-section (1) of section 10 of the Bombay General Clauses Act do not apply to a case where there is no scope for the computation of a period, i.e. of a period between two termini of time. It is only, as stated in paragraph 200 of Vol. 32 of Halsbury's Laws of England page 138, where a period of time running from a given day or event to another day or event is prescribed by law or fixed by contract, and the question arises whether the computation is to be made inclusively or exclusively of the first mentioned or of the last mentioned day, regard must be had to the context and to the purposes for which the computation has to be made.

VGP

4-6-56.

x It is in that context that the use of the word "from" may lead to some ambiguity. In the commencement of a statute from a particular day there is no scope whatsoever for ^{the} computation of a period and of excluding any particular commencing day. It is well settled that, in respect of such commencement, law takes no note of a fraction of a day, ^{and it comes into} ~~a principle~~ force from the first moment of the day, a principle which has received statutory recognition in section 5(2) of the Bombay General Clauses Act, 1904. Therefore, the expression "with effect from" was capable of only the one meaning, i.e. the Act came into operation from the first moment of that particular date. The commencement clause of statute in England as well as in this Country generally uses the word "on" but doubts have been expressed as to whether that may not suffice where it is necessary to emphasize the continuity of the operation of the Act from the time it comes into force, and it has even been suggested that if one wants to be very meticulous, the correct expression to use would be "on and from" or "on and after". The expression "with effect from" is well established in statutory drafting in India. In the notifications issued by the government of India under various enactments the same expression has been used and so far, no one has taken any objection to it. It has been used in the Indian Finance Act, 1930, passed by the Central Legislature where in section 5 it is enacted that "with effect from the first day of April 1930 the Schedule contained shall be inserted in..... Act".

3. In short, the drafting formula used in the notification is well established in Indian practice and is not open to any serious objections. It is now ^{sanctioned} ~~sanctioned~~ by judicial support, thus leaving no room for ambiguity. It does not seem necessary to make a change by adopting the alternative of using "on" lest doubt may be thrown on the notification already issued and the provisions of statutes wherein this expression may have been used.

Remembrancer of Legal Affairs.

VGP.

4-6-55.

H.M. (L)

S.D. D.W.D.

*H.P.

27/5.

I agree..

S.D.

B.G. Kher.

31-5

x 5963
28/5/49

The Bombay Rents Hotel & Lodging House Rates Control Act, 1947, has been amended thrice during the period of a year and a half. Frequent amendments in such Acts are not desirable. It is true that section 41(4) gives power to the Controller to enter premises in regard to which an inquiry is being held. The power of entry is no doubt restricted. But ^{if} the object of the Act is to control the rates of hotels only, it will not be proper to carry out the Controller's suggestion that he and his Inspectors should have a general power of entry. Merely, because the Controller is to be given a staff of Inspectors, that circumstance alone will not justify the conferment of the power on the Controller and his subordinates in the manner suggested by the Controller. Before legislation is decided upon the Department should obtain the orders of Government in the matter.

~~S. D.~~

Sd/-

Additional Secretary to Government.

U.R. to H. & L.G.D. No., dated 11300, dated the 10th Oct. 1949.

VGP.

4-6-56.